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EXAMINER

PADEN, CAROLYN A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Applicants' amendments to the claims are sufficient to overcome the rejections using Bowers as further evidenced by Joslyn and further in view of Musser.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, 11, 12, 14-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (2,968,628) as further evidenced by Joslyn and in view of Villagran (5,490,999).

Reed discloses a propellant composition for foods. In example 8 peanut spread is prepared with the propellant and contained homogenized peanut butter and peanut oil. The combination is used in a pressurized container (column 1, lines 54-57). The claims appear to differ from Reed in the recitation of the composition of the homogenized peanut butter. Villagran teaches a reduced fat peanut spread containing 53% peanuts, molasses, stabilizer, mono- and diglycerides emulsifier, soy protein isolate, corn syrup solids and nutrients (example I). Alternative emulsifiers are shown at column 4,

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lines 15-18. The peanut butter is prepared by mixing and homogenization. It would have been obvious to one of ordinary skill in the art to utilize the homogenized peanut butter of Villagran in the pressurized container of Reed as an example of homogenized peanut butter. It is appreciated that plant fiber is not mentioned but applicant described peanuts as including plant fiber. To the extent that peanuts are composed of peanut oil and peanut solids, one of ordinary skill in the art would expect the peanut product of Villagran to include the extent of plant fiber and peanut oil that is in the claims. Water would be an expected ingredient of molasses and corn syrup solids.

Although the density of the composition was not measured, one of ordinary skill in the art would expect the composition of Villagran to have the density of the claims. Joslyn is cited for further evidence of the density of foods. At the top of page 202, line 5, relative density and specific gravity are defined as equivalent terms. In the middle of page 202 the density of water is described as being at about 1.0. At the bottom of page 202, last paragraph, specific gravity is described as being a measure of the concentration of soluble solids in syrups, brines, fruit juices and beverages. At page 202, in Figure 11, the specific gravity of sucrose, tomato juice and salt are shown at varying

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concentrations. With the evidence of Joslyn at Figure 11, one of ordinary skill in the art would expect the density or specific gravity of the peanut composition of Villagran to have the density of the claims because of the extent of water, sugar and solids in the composition. It is appreciated that alternative emulsifiers are not mentioned but Villagran provides for the use of more than one emulsifier in his composition. It is appreciated that dairy protein concentrate is not mentioned but dairy protein would have been an obvious prein alternative to soy protein isolate.

Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed as further evidenced by Joslyn and in view of Villagran as applied to claims 1, 4-9, 11, 12, 14-22 and 25 above, and further in view of Food Engineering article.

The claims appear to differ from Reed as further evidenced by Joslyn in view of Villagran in the recitation of the use of the particular container used in the product. Food Engineering teaches that aerosol containers with floating plungers are known in the art. This article also draws equivalence between the two aerosol and piston type filling containers. No unobvious or unexpected result is seen from the use of one pressurized can or the other.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

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